



STATE OF WISCONSIN
BOARD ON AGING AND LONG TERM CARE

1402 Pankratz Street, Suite 111
Madison, WI 53704-4001
(608) 246-7013
Ombudsman Program (800) 815-0015
Medigap Helpline (800) 242-1060
Fax (608) 246-7001
<http://longtermcare.state.wi.us>

BOARD OF DIRECTORS

Eva Arnold
Rose Boron
Patricia A. Finder-Stone
Eugene Lehrmann
Terry Lynch
Tanya L. Meyer
Dale B. Taylor

EXECUTIVE DIRECTOR

George F. Potaracke

TESTIMONY

William P. Donaldson; Counsel to the BOALTC
Assembly Committee on Aging and Long Term Care
19 February 2008

Dating from the time when Residential Care Apartment Complexes (RCACs) were first recognized in Wisconsin statutes, there has been a significant degree of support for the idea of giving residents of these facilities the benefit of Long Term Care Ombudsman advocacy services. Prior Legislatures have considered this proposal and rejected it, stating that the primary reason for not expanding the advocacy services of the Ombudsman to RCACs was fiscal in nature. AB 664 includes authority for the Long Term Care Ombudsman Program to provide these services to RCAC residents.

With the creation of over 200 RCACs including over 9,500 apartment units in just over 10 years, it is clear that the increase in the availability of this sort of living arrangement for the elderly is a logical response to growing demand created by an aging population and pressures exerted by declining capacity of other provider types.

Because the definition of an RCAC does not fit neatly into the designation of care providers mandated by the federal Older Americans Act to be served by the Long Term Care Ombudsman, state law has not required this advocacy. Wisconsin has seen fit to expand the scope of the Ombudsman's services to include advocating for clients of the FamilyCare Program, regardless of where these persons reside. This will necessarily mean that Ombudsmen will be entering RCACs and advocating for some, but not all, of the facility's tenants. State law has also been modified over the years to include other provider types that are unique to our state as a proper venue for the Ombudsman's work. Persons living in Adult Family Homes and even those staying in their own residence with funding for services provided through the Community Options Programs are a part of the Long Term Care Ombudsman Program's client population. It has been and increasingly continues to be the case that many residents of RCACs, the most rapidly growing segment of the assisted living universe, need the assistance of competent, committed advocates to help them resolve the difficulties they encounter within this environment.

A resident of an RCAC, as does a resident of a nursing home or a CBRF, considers the facility to be her "home." A violation of rights, or a breach of the promises made on an admission agreement, represent a significant intrusion on the expectation of that resident to be secure in her home. Ombudsmen, by training and by philosophy, are acutely aware of and concerned for the autonomy, privacy and security of the residents we serve. An Ombudsman is conditioned to address and treat each and every client as if we were meeting in the person's living room and never to pursue an issue without positive informed consent. While Ombudsmen do have a statutory right to enter a facility, the individual's room or apartment remains entirely under the control of that resident. The Ombudsman will not enter unannounced or uninvited. It is this reputation among long term care consumers that has stimulated contacts to our agency from RCAC residents who are, as yet, unable to avail themselves of the Ombudsman's advocacy.

The Board on Aging and Long Term Care has received numerous contacts from residents of RCACs seeking advocacy assistance over the course of the past several years, and complaints lodged with the DHFS office in charge of registering and certifying RCACs have been steadily increasing. With the trend toward a more involved and vocal aging population, this is to be expected. It can also be expected that the Baby Boomers will be looking for information, answers and assistance in pressing their concerns and that is what the Long Term Care Ombudsman Program is all about. The Board on Aging and Long Term Care anticipates that many of the apprehensions that have lead RCAC operators to oppose previous bills that would have permitted their tenants to access the Ombudsmen will be relieved in large part by their experiences when working with our staff in the FamilyCare context.

Additionally, the Long Term Care Ombudsman Program has received inquiries seeking information and requests for training from RCAC administrators who have heard of our program or who may have had positive experiences working with Ombudsmen in other settings. Similarly, families who have relied on Ombudsman services with family members in nursing homes or other assisted living environments have called to seek information. Uniformly, these families were dumbfounded to find that the advocacy and assistance afforded to residents of the other facilities was not available to their loved ones in an RCAC. We are, of course, unable to offer a clear, understandable explanation for why this is so.

I thank you, Chairman Townsend and the committee for your kind attention and consideration of this important proposal. I also want to thank Rep. Krusick for her tireless work on this issue for the benefit of the elderly and disabled citizens of Wisconsin.

The Board on Aging and Long Term Care respectfully asks that the committee vote in favor of AB 664 and recommend it to the full Assembly as a bill worthy of passage.



February 19, 2008

To: Assembly Committee on Aging and Long-Term Care

From: Gail Sumi, AARP Wisconsin -- 608-286-6307

Re: AB 664, related to Long-Term Care Ombudsman

AARP Wisconsin supports AB 664, allowing residents and staff of Residential Care Apartment Complex (RCAC) to have access to Long-Term Care Ombudsman services. We want to thank Representatives Krusick and Musser and others for authoring this critical legislation.

Wisconsin is experiencing a boom of long-term care options to meet the demand of our aging population. In 2001, there were 77 facilities classified as RCAC's. There are currently 217 facilities serving approximately 9,500 residents.

Individuals residing in RCAC's should be no different than the staff and residents of other long-term care facilities who benefit from Long-Term Care Ombudsman services. Ombudsmen provide mediation, negotiation and liaison services to residents, helping staff, the residents and their families to resolve disputes both small and large.

Ombudsmen can often prevent conflicts and fix situations before more extensive regulatory authority is invoked. They are recognized as an advocate by the residents and their families.

A provision in the recently passed state budget (Act 20) authorizes the Long Term Care Ombudsman Program to advocate on behalf of Family Care enrollees regardless of where they live. This means that Ombudsmen will be entering and advocating for residents of RCAC's who participate in the Family Care program. While this will be a distinct benefit to some residents, those residents who are not funded by Family Care will be unable to access the same level of service. AB 664 will even the playing field for all RCAC residents.

This proposal will make a profound difference in people's lives. Again, we ask you to support it.

Thank you for your consideration.



Coalition of Wisconsin Aging Groups
Advocacy ■ Membership ■ Elder Law

2850 Dairy Drive
Suite 100
Madison, Wisconsin
53718-6751

TELEPHONE
608-224-0606

FAX
608-224-0607

www.cwag.org

Testimony
Before The
Assembly Committee on Aging and Long-Term Care

February 19, 2008

By
Tom Frazier
Executive Director, CWAG

*Securing the present
and protecting
the future.*

CWAG supports AB 664 for the following reasons:

1. Wisconsin has a very successful and highly respected Ombudsman program that can be of assistance to both residents and facilities in mediating complaints regarding quality of care.
2. With the growth of RCACs, older persons need access to an independent third party to assist in mediating problems. And it is mediation not regulation.
3. While Ombudsman may have access to residents and facilities, probably over 90% of cases would involve a request for assistance from a resident or family member.
4. The alternative to resolve disagreements for older consumers is an attorney which is likely to be far more expensive than \$1 per month.
5. Don't wait for a disaster that will result in regulation, but provide a mediation model that has been highly successful in nursing homes and CBRFs.

On behalf of CWAG, I urge you to vote in favor of AB 664. Thank you.



THE UNIVERSITY OF CHICAGO

1961

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO



Testimony

**To: Representative John Townsend, Chair
Members of the Assembly Committee Aging and Long Term Care**
From: LuAnne Barnet
Date: Tuesday, February 19, 2008
Re: Opposition to Assembly Bill 664

On behalf of the membership of the Residential Services Association of Wisconsin (RSA-Wisconsin), we urge all committee members to **OPPOSE ASSEMBLY BILL 664.**

AB-664 would authorize access by the long-term care ombudsman program into Residential Care Apartment Complex (RCAC) occupied apartments and impose a new \$12 annual fee\tax on occupied apartments. This new fee\tax, based on the RCAC capacity may generate as much as \$100,000 annually.

First, it should be noted that on May 17, 2007 the Joint Finance Committee voted 16-0 in opposition to a similar proposal, deleting it from the budget.

RSA-Wisconsin supports and does want to work with lawmakers to improve quality care and safety in Wisconsin's long-term care system. However, the long-term care profession can no longer accept mandates that will increase operational costs, when at the same time lawmakers refuse to provide adequate reimbursement for necessary care services.

RCACs – Independent Home Like Settings

Unlike the facilities currently included under the definition of "long-term care facilities" for the purpose of authorizing Board involvement and advocacy, residents of RCACs live comparatively independent lifestyles. They maintain private, independent apartments, and receive assistance in the form of supportive, personal, or nursing care for less than an average of four hours per day.

These individuals are less dependent on their caregivers, and possess more privacy and personal independence than nursing home residents or individuals being served in a community living arrangement that is staffed around-the-clock (such as a CBRF).

RSA Wisconsin

Residential Services Association of Wisconsin • 6737 W. Washington St. • Suite 1420 • Milwaukee, Wisconsin 53214
Phone: (414) 276-9273 • Fax: (414) 276-7704
www.rsawisconsin.org

RCACs were not intended to be long-term care facilities, but rather models of independent apartment living. In addition, DHFS administrative rules already require RCACs to "provide each tenant with an independent apartment in a setting that is home-like and residential in character" and to "operate in a manner that protects tenants' rights, respects tenants' privacy, enhances tenant self-reliance, and supports tenant autonomy in decision making."

Although RSA does support and commend the Board on Aging and Long-Term Care and the ombudsman program, extending this authority to RCACs and authorizing ombudsman to enter private residences without permission infringes on a tenant's right to privacy.

Under existing law residents of RCACs retain the option of contacting DHFS with concerns.

No Other Long-Term Care Facilities Pay a Fee/tax for Ombudsman Advocacy Services

Currently, no other long-term care facilities whose residents are served by the Board (including nursing homes and CBRFs) pay a fee/tax to support the cost of the Board's advocacy services. Mandating that RCACs pay a fee/tax would be unfair and inconsistent. In addition, this fee/tax will either be cost-shifted to the RCAC tenants (increasing their costs) or it will somehow have to be absorbed by the provider – adding to the list of items that are increasing overall costs associated with providing care and again forcing the provider to implement cuts elsewhere in their respective budgets.

Side Note: Wisconsin's Long-Term Care System is Under Funded

The greatest threat to quality healthcare today is inadequate reimbursement by the state.

Please keep in mind that many of the long-term care programs that individuals with disabilities rely upon have received minimal or no general rate increases. Some programs have done without rate increases for over a decade. This state of insufficient reimbursement coupled with new government mandates/regulations; rising inflation; ever increasing liability insurance and health insurance premiums; and, significant increases in fuel and utility costs is placing long-term care providers in a precarious situation.

As a lawmaker, please be honest with yourself and with your colleagues. If a long-term health care provider has not received a rate increase from the Legislature in years and cannot even hope for any relief until the next biennial budget cycle (July 1, 2009) - isn't our state government essentially guilty of forcing long-term healthcare providers into making questionable financial and program cuts that could jeopardize quality care?

Again, please oppose Assembly Bill 664 and placing any new mandates on the healthcare profession that will increase operational costs, at least until the Governor and Legislature step up and begin reimbursing long-term healthcare providers for the actual cost of providing care.

Thank you.

Wisconsin Association of Homes and Services for the Aging, Inc.

204 South Hamilton Street • Madison, WI 53703 • 608-255-7060 • FAX 608-255-7064 • www.wahsa.org

February 19, 2008

To: Representative John Townsend, Chair
Members, Assembly Aging and Long-Term Care Committee

From: John Sauer, Executive Director
Tom Ramsey, Director of Government Relations

Subject: **WAHSA Opposition to 2007 Assembly Bill 664**

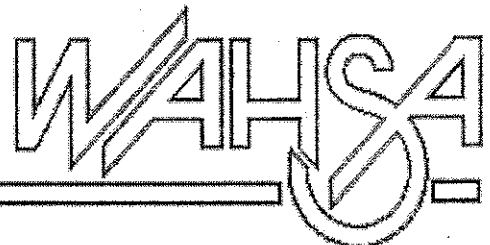
The Wisconsin Association of Homes and Services for the Aging (WAHSA) is a statewide membership organization of 187 *not-for-profit* corporations principally serving the elderly and persons with a disability. Membership is comprised of religious, fraternal, private not-for-profit, county, and municipal organizations which own, operate and/or sponsor nursing homes, facilities for the developmentally disabled (FDD), community-based residential facilities (CBRF), HUD Section 202 Supportive Housing for the Elderly apartment complexes, apartment complexes for independent seniors, and community service programs ranging from Alzheimer's support, child and adult day care, homecare and hospice to Meals on Wheels. WAHSA members also operate 59 not-for-profit *residential care apartment complexes* (RCAC).

2007 Assembly Bill 664 would expand the authority of the Board on Aging and Long-Term Care (BOALTC) to provide ombudsman services in RCACs and expand s. 50.09, Wis. Stats., the residents rights section for residents of nursing homes and CBRFs, to include tenants of RCACs.

Virtually the same provision was contained in Governor Doyle's 2007-09 budget bill. It was deleted from the budget bill on a bi-partisan 16-0 vote of the Joint Committee on Finance. WAHSA members opposed this provision when it was contained in the Governor's budget bill; that opposition also applies to Assembly Bill 664.

Our opposition to AB 664 mirrors our opposition to similar provisions contained in the 2007-09 budget bill, in 2003 Assembly Bill 644 (the bill died in this committee), and in 1997 Assembly Bill 100, the 1997-99 budget bill (it was vetoed by Governor Thompson):

- **Permitting ombudsmen unrestricted access to the apartments of RCAC tenants is an invasion of privacy.** AB 664 would expand the definition of "long-term care facility" to include RCACs. Under s. 16.009(4)(b)1a, Wis. Stats., current statute reads "*the ombudsman or designated representative MAY AT ANY TIME, WITHOUT NOTICE, ENTER, AND HAVE IMMEDIATE ACCESS TO A CLIENT OR A RESIDENT IN A LONG-TERM CARE FACILITY.*" (Emphasis added).



Therefore, AB 664 would permit an ombudsman to enter the private apartment of a RCAC tenant without the permission of that tenant. Do we expect that to happen often if this provision becomes law? No, especially since each individual RCAC apartment must have a lockable entrance and exit (See HFS 89, the RCAC Rule, under HFS 89.13(1)). Should such access ever be permitted without the prior consent of the RCAC tenant or upon the tenant's request? No.

- **RCACs are not "long-term care facilities."** As defined under HFS 89.13(1), Wis. Adm. Code, a "residential care apartment complex" means "a place where five or more adults reside *that consists of independent apartments, each of which has a lockable entrance and exit*, a kitchen, including a stove, and individual bathroom, sleeping and living areas . . . 'Residential care apartment complex' *does not include* a nursing home or a community-based residential facility . . ." (Emphasis added). Unlike a nursing home, a CBRF, or any other long-term care facility, a RCAC is a personal residence; the requirement of a lockable entrance and exit means the tenant controls who comes into the apartment and who does not. The only difference between a senior living in his/her own home or apartment and receiving Community Options Program (COP) services and a tenant in a RCAC receiving COP-waiver services is the RCAC provider, not the county or a private contractor that sub-contracts with the county, is the service provider to the RCAC tenant. Yet neither current statute nor AB 664 permit an ombudsman to enter the home or apartment of a COP client "at any time without notice;" why should RCAC tenants be treated any differently? Why should they be asked to potentially give up their privacy when COP clients are not?
- **The legislative intent of the RCAC statute and rule was to acknowledge a distinction between the long-term care facility (i.e., nursing home, CBRF) and the RCAC apartment where long-term care services are provided.** Back in the mid 1990s, Governor Tommy Thompson indicated he found it odd that COP providers serving clients in their homes or apartments faced limited regulation while long-term care providers seeking to provide similar services in their campus apartments were highly regulated. He wanted to balance the playing field and the "assisted living facility," renamed the "residential care apartment complex" in 1997, was his response. The RCAC was created to foster the independence, privacy and dignity of its tenants. The RCAC was not intended to be a new, highly-regulated health care facility; its focus was **housing with services** and a relationship that was as much landlord-tenant as it was provider-resident. The goal was to expand home- and community-based care to a congregate setting. Thus, it was by intent, not mere semantics, that one who resides in a nursing home or a CBRF is defined as a "resident" (s. 50.01 (6)) and one who resides in a RCAC is defined as a "tenant" (HFS 89.13 (32)). By defining a RCAC as a "long-term care facility," AB 664 runs counter to the legislative intent of the creation of the RCAC.
- **Unlike the resident of a nursing home or CBRF, the RCAC tenant must have the cognitive ability to understand and sign a contract/service agreement as a condition of admission.** The NOTE under HFS 89.29 Admission and Retention of Tenants reads: "This (admission) requirement is included because (RCAC) tenants need to be competent to understand and express their needs and preferences, enter into a service agreement, and understand and accept risk." Because they are independent and able to make their own decisions, the need for ombudsman services is significantly less for RCAC tenants than

for nursing home/CBRF residents. This point was discussed in Legislative Fiscal Bureau (LFB) Issue Paper #161 *Ombudsman Services for Residents of Residential Care Apartment Complexes (Board on Aging and Long-Term Care)*, dated May 17, 2007. Under Discussion Point #2, the Bureau wrote: "It may be argued that these individuals (RCAC tenants) are less dependent on their caregivers, and possess more privacy and personal independence than nursing home residents or individuals being served in a community living arrangement that is staffed around-the-clock (such as a CBRF). This difference in the level of personal independence generally associated with residents of RCACs may contribute to the perception that these individuals have a different relationship with their support staff, and therefore may be less vulnerable to the sort of instances of mistreatment or infringement on their personal rights by caregivers or facility staff that the ombudsman program would typically address." WAHSA members concur with this argument and suggest it may help explain the 16-0 vote of the members of the Joint Committee on Finance to delete a provision similar to AB 664 from the 2007-09 budget bill.

- **As noted above, this issue is not new; it was vetoed from the 1997-99 budget, it died in committee as 2003 Assembly Bill 644, and it was deleted from the 2007-09 budget bill on a 16-0 vote of the Joint Committee on Finance.** We strongly concur with Governor Tommy Thompson's rationale for vetoing this provision from 1997 Assembly Bill 100, the 1997-99 budget bill. In his veto message, the Governor wrote: "I object to the expansion of the ombudsman program to residential care apartment complexes since these facilities are designed as home-like environments for the elderly and disabled." AB 664 flies in the face of this rationale.
- **Where is the need for this expanded service?** According to LFB Issue Paper #161, dated May 17, 2007, the only stated reason for this provision appears to be "BOALTC has received calls from residents (sic) of RCACs or their family members requesting assistance or advocacy, but due to the lack of statutory authority, ombudsman staff has been unable to assist these individuals." There are over 9,600 RCAC tenants; how many phone calls has the BOALTC received from these tenants or family members? HFS 89, the RCAC rule, has a grievance procedure specific to RCAC tenants: did the BOALTC inform those RCAC callers of that grievance procedure and was it utilized? The code also specifies that RCAC tenants can file complaints with the Division of Quality Assurance (DQA) in the Department of Health and Family Services: did the BOALTC inform those callers of that right and did they utilize it? If the answer to these questions is "yes," where is the need for change? And if the answer is "no," the question becomes "why not?" LFB Issue Paper #161 indicates that a preliminary total of only 28 RCAC complaints of caregiver misconduct were filed with the DQA in 2006 and only 3 of those complaints were substantiated. Does this warrant the potential invasion of privacy that could result from the adoption of this provision?
- **Under AB 664, RCACs, and ultimately RCAC tenants, would be taxed \$12 annually to fund one additional ombudsman position and a service they never requested.** The Governor didn't even assess this "Granny Tax" in his budget proposal to expand ombudsman services to RCACs. Simply stated, RCAC tenants should not be forced to pay for a service most have not requested. They probably will take offense to the language in the bill which creates s. 50.034 (9) and the \$12 RCAC tax "for the privilege

of doing business in this state." They probably will argue that if this proposal is such a privilege, it should be paid for with state funds, not facility or tenant funds.

- **The extension of the nursing home/CBRF residents' rights under s. 50.09 to RCAC tenants is unnecessary because RCAC tenants have their own tenant rights under HFS 89.** Subchapter III of HFS 89 contains an expansive list of tenants' rights specifically tailored to RCAC tenants. (Ironically, the creation of these HFS 89 tenant rights was demanded by a number of the organizations who requested AB 664 and are now inexplicably changing their position on this issue). At the same time, virtually all the nursing home/CBRF residents' rights under Chapter 50 are provided in similar form to RCAC tenants under HFS 89. The AB 664 extension of the Chapter 50 nursing home/CBRF residents' rights to RCAC tenants is unnecessary, potentially confusing, and possibly in conflict with their rights under HFS 89.
- **Some nursing home/CBRF residents' rights under Chapter 50 either are not applicable or not relevant in the RCAC setting.** Under Section 7 of AB 664, s. 50.09(1m)(f)1 would grant a RCAC tenant the right to "privacy for visits by spouse." Unless the RCAC tenant and his/her spouse are experiencing marital discord, they will be sharing their RCAC apartment and such a "right" is unnecessary. Under s. 50.09(1m)(j) of the budget bill, a RCAC tenant has the right to not be involuntarily discharged for nonpayment of charges if the Medicaid funding for the tenant's care is reduced or terminated because the tenant requires a level or type of care that is not provided by the RCAC. RCAC tenants are not eligible for Medicaid funding.
- **Some important tenants' rights in HFS 89 are not included under the Chapter 50 nursing home/CBRF residents' rights.** Specifically, the nursing home/CBRF residents' rights statute does not contain the right of "self direction" which is guaranteed RCAC tenants under HFS 89.34(3). That provision states a RCAC tenant has the right "to make reasonable decisions relating to activities, daily routines, use of personal space, how to spend one's time and other aspects of life in the residential care apartment complex."

WAHSA members believe the role of the ombudsman should remain focused on the challenges facing the residents of nursing homes, CBRFs, adult family homes and the other long-term care facilities under its jurisdiction. Expanding the domain of the BOALTC's ombudsman program to include RCACs would divert their limited staff and resources away from the areas most in need of their services.

Thank you for considering our viewpoints on AB 664.

16.009 Board on aging and long-term care. (1) In this section: *(BOALTC)*

(a) "Beneficiary" means an individual who is eligible for coverage.

(ag) "Board" means the board on aging and long-term care.

(ar) "Client" means an individual who requests services of the office, or a resident on whose behalf a request is made.

(b) "Homestead credit program" means the program under ss. 71.51 to 71.55.

(c) "Household" has the meaning given in s. 71.52 (4).

(d) "Household income" has the meaning given in s. 71.52 (5).

(e) "Income" has the meaning given in s. 71.52 (6).

(em) "Long-term care facility" includes any of the following:

1. A nursing home, as defined in s. 50.01 (3).
2. A community-based residential facility, as defined in s. 50.01 (1g).

3. A facility, as defined in s. 647.01 (4).

4. A swing bed in an acute care facility or extended care facility, as specified under 42 USC 1395tt.

5. A hospice, as defined in s. 50.90 (1) (c).

6. An adult family home, as defined in s. 50.01 (1).

(f) "Long-term care insurance" means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home, including but not limited to adult day care and continuing care retirement communities.

(gm) "Office" means the office of the long-term care ombudsman.

(gr) "Ombudsman" means the long-term care ombudsman, as specified in sub. (4) (a).

(h) "Physician" has the meaning given in s. 448.01 (5).

(i) "Program" means the long-term care ombudsman program.

(j) "Resident" means a person cared for or treated in a long-term care facility.

(2) The board shall:

(a) Appoint an executive director within the classified service who shall employ staff within the classified service.

(b) Implement a long-term care ombudsman program, to do all of the following:

1. Investigate complaints from any person concerning improper conditions or treatment of aged or disabled persons who receive long-term care or concerning noncompliance with or improper administration of federal statutes or regulations or state statutes or rules related to long-term care for the aged or disabled.

2. Serve as mediator or advocate to resolve any problem or dispute relating to long-term care for the aged or disabled.

(d) Promote public education, planning and voluntary acts to resolve problems and improve conditions involving long-term care for the aged or disabled.

(e) Monitor the development and implementation of federal, state and local laws, regulations, rules, ordinances and policies that relate to long-term care facilities for the aged or disabled.

(em) Monitor, evaluate and make recommendations concerning long-term community support services received by clients of the long-term support community options program under s. 46.27.

(f) As a result of information received while investigating complaints and resolving problems or disputes, publish material that assesses existing inadequacies in federal and state laws, regulations and rules concerning long-term care for the aged or disabled. The board shall initiate legislation as a means of correcting these inadequacies.

(g) Stimulate resident, client and provider participation in the development of programs and procedures involving resident rights and facility responsibilities, by establishing resident councils and by other means.

(h) Conduct statewide hearings on issues of concern to aged or disabled persons who are receiving or who may receive long-term care.

(i) Report annually to the governor and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (3). The report shall set forth the scope of the programs for providing long-term care for the aged or disabled developed in the state, findings regarding the state's activities in the field of long-term care for the aged and disabled, recommendations for a more effective and efficient total program and the actions taken by the agencies of the state to carry out the board's recommendations.

(j) Provide information and counseling to consumers regarding insurance policies available to supplement federal medicare insurance coverage, including long-term care insurance, and the eligibility requirements for medical assistance under s. 49.46 (1), 49.468 or 49.47 (4). To implement this responsibility, the board shall provide training, educational materials and technical assistance to volunteer organizations and private businesses willing and able to provide insurance and medical assistance eligibility information and counseling, in order that these organizations and businesses may provide the information and counseling to consumers.

(p) Employ staff within the classified service or contract with one or more organizations to provide advocacy services to potential or actual recipients of the family care benefit, as defined in s. 46.2805 (4), or their families or guardians. The board and contract organizations under this paragraph shall assist these persons in protecting their rights under all applicable federal statutes and regulations and state statutes and rules. An organization with which the board contracts for these services may not be a provider, nor an affiliate of a provider, of long-term care services, a resource center under s. 46.283 or a care management organization under s. 46.284. For potential or actual recipients of the family care benefit, advocacy services required under this paragraph shall include all of the following:

1. Providing information, technical assistance and training about how to obtain needed services or support items.

2. Providing advice and assistance in preparing and filing complaints, grievances and appeals of complaints or grievances.

3. Providing negotiation and mediation.

4. Providing individual case advocacy assistance regarding the appropriate interpretation of statutes, rules or regulations.

5. Providing individual case advocacy services in administrative hearings and legal representation for judicial proceedings regarding family care services or benefits.

(3) The board may:

(a) Contract with any state agency to carry out the board's activities.

(bm) Employ an attorney for provision of legal services in accordance with requirements of the long-term care ombudsman program under 42 USC 3027 (a) (12) and 42 USC 3058g (g).

(4) (a) The board shall operate the office in order to carry out the requirements of the long-term care ombudsman program under 42 USC 3027 (a) (12) (A) and 42 USC 3058f to 3058h. The executive director of the board shall serve as ombudsman under the office. The executive director of the board may delegate operation of the office to the staff employed under sub. (2) (a), as designated representatives of the ombudsman.

(b) The ombudsman or his or her designated representative may have the following access to clients, residents and long-term care facilities:

1. The ombudsman or designated representative may:

AB664
CREATES:
"7.
RESIDENTIAL
CARE
APARTMENT
COMPLEX"

COP
SERVICES:
A BOALTC
FUNCTION,
NOT AN
OMBUDSMAN
FUNCTION

PERMITTED IN RCAC IF AB664
ADAPTED

16.009 DEPARTMENT OF ADMINISTRATION

PERMITTED IN RCAC IF AGENCY IS ADOPTED

a. At any time without notice, enter, and have immediate access to a client or resident in, a long-term care facility.

b. Communicate in private, without restriction, with a client or resident.

c. Except as provided in subd. 1. d., have access to and review records that pertain to the care of the resident if the resident or his or her guardian has consented or if the resident has no guardian and is unable to consent.

d. With the consent of a resident or his or her legal counsel, have access to and review records that pertain to the care of the resident, as specified in s. 49.498 (5) (e).

e. Have access to and review records of a long-term care facility as necessary to investigate a complaint if the resident's guardian refuses to consent; if the ombudsman or designated representative has reason to believe that the guardian is not acting in the best interests of the resident; and, for investigation only by a designated representative, if the designated representative obtains the approval of the ombudsman.

f. Have access to those administrative records, policies and documents of a long-term care facility to which the resident or public has access.

g. Have access to and, on request, be furnished copies of all licensing or certification records maintained by the department of health services with respect to regulation of a long-term care facility.

Note: Subd. 1. g. is shown as amended eff. 7-1-08 by 2007 Wis. Act 20, section 9121 (6) (a). Prior to 7-1-08 it reads:

g. Have access to and, on request, be furnished copies of all licensing or certification records maintained by the department of health and family services with respect to regulation of a long-term care facility.

2. The ombudsman shall receive, upon request to a long-term care facility, the name, address and telephone number of the guardian, legal counsel or immediate family member of any resident.

(d) A long-term care facility or personnel of a long-term care facility that disclose information as authorized under this subsection are not liable for that disclosure.

(e) Information of the office relating to a client, complaints or investigations under the program may be disclosed only at the discretion of the ombudsman or his or her designated representative. The identity of a client or named witness or of a resident who is not a client may be revealed under this paragraph only if one of the following conditions is met:

1. Under written authorization by the client, witness or resident or his or her guardian, if any.

2. Under the lawful order of a court of competent jurisdiction.

(5) (a) No person may do any of the following:

1. Discharge or otherwise retaliate or discriminate against any person for contacting, providing information to or otherwise cooperating with any representative of the board.

2. Discharge or otherwise retaliate or discriminate against any person on whose behalf another person has contacted, provided information to or otherwise cooperated with any representative of the board.

(b) Any person who violates par. (a) may be fined not more than \$1,000 or imprisoned for not more than 6 months or both.

(d) Any employee who is discharged or otherwise retaliated or discriminated against in violation of par. (a) may file a complaint with the department of workforce development under s. 106.54 (5).

(e) Any person not described in par. (d) who is retaliated or discriminated against in violation of par. (a) may commence an action in circuit court for damages incurred as a result of the violation.

History: 1981 c. 20; 1983 a. 524; 1985 a. 29; 1987 a. 27; 1989 a. 31, 294; 1991 a. 39, 232; 1993 a. 16, 205; 1995 a. 27 s. 9126 (19); 1997 a. 131; 1999 a. 9, 82, 86, 186; 2003 a. 33; 2007 a. 20 ss. 74, 9121 (6) (a).

16.01 Women's council. (1) In this section, "agency" means any office, department, agency, institution of higher education, association, society or other body in state government created or authorized to be created by the constitution or any law which is entitled to expend moneys appropriated by law, including the legislature and the courts, and any authority created under subch. II of ch. 114 or ch. 231, 233 or 234.

(2) The women's council shall:

(a) Identify the barriers that prevent women in this state from participating fully and equally in all aspects of life.

(b) Conduct statewide hearings on issues of concern to women.

(c) Review, monitor and advise all state agencies regarding the impact upon women of current and emerging state policies, procedures, practices, laws and administrative rules.

(d) Work closely with all state agencies, including the University of Wisconsin System and the technical college system, with the private sector and with groups concerned with women's issues to develop long-term solutions to women's economic and social inequality in this state.

(e) Recommend changes to the public and private sectors and initiate legislation to further women's economic and social equality and improve this state's tax base and economy.

(f) Disseminate information on the status of women in this state.

(g) Submit a biennial report on the women's council's activities to the governor and to the chief clerk of each house of the legislature, for distribution to the appropriate standing committees under s. 13.172 (3).

(3) All state agencies, including the University of Wisconsin System and the technical college system, shall fully cooperate with and assist the women's council. To that end, a representative of a state agency shall, upon request by the women's council:

(a) Provide information on program policies, procedures, practices and services affecting women.

(b) Present recommendations to the women's council.

(c) Attend meetings and provide staff assistance needed by the women's council.

(d) Inform the agency's appointing authority of issues concerning the women's council.

History: 1983 a. 27; 1987 a. 27, 186, 399; 1989 a. 31; 1993 a. 399; 1995 a. 27; 2005 a. 335.

16.02 Acid deposition research council. (1) The acid deposition research council shall perform all of the following functions:

(a) Recommend objectives for acid deposition research in this state.

(b) Recommend the types of and priorities for acid deposition research.

(c) Evaluate mechanisms for funding and recommend funding levels for acid deposition research.

(d) Review all research reports relating to acid deposition requested by or submitted to the council.

(2) The acid deposition research council shall, by July 1 of each even-numbered year, submit a report of its work summarizing its recommendations under sub. (1) (a) to (c) and the results of the research reviewed under sub. (1) (d) and shall file the report with the governor, the secretary, the chairperson of the natural resources board and the chief clerk of each house of the legislature for distribution to the appropriate standing committees under s. 13.172 (2).

History: 1985 a. 296; 1987 a. 403 s. 256.

16.023 Wisconsin land council. (1) The Wisconsin land council shall conduct the following functions:

Text from the 2005-06 Wis. Stats. database updated by the Revisor of Statutes. Only printed statutes are certified under s. 35.18 (2), stats. Statutory changes effective prior to 1-2-08 are printed as if currently in effect. Statutory changes effective on or after 1-2-08 are designated by NOTES. Report errors at (608) 266-2011, FAX 264-6978, <http://www.legis.state.wi.us/rsb/>



TOMMY G. THOMPSON

Governor
State of Wisconsin

To the Honorable Members of the Assembly:

I have approved Assembly Bill 100 as 1997 Wisconsin Act 27 and deposited it in the Office of the Secretary of State.

The budget bill is the most important piece of legislation enacted in each legislative session. It is the largest bill, it receives the most debate and it affects all citizens, businesses and local governments. The taxing and spending decisions made in the budget bill will have an impact far into the future. I am confident that this budget makes a wise investment in our future.

The Legislature is to be commended for its hard work and bipartisanship in passing a budget. Wisconsin has waited a long time for this budget bill to be passed but the end product is good. The bill reduces and then permanently restrains the growth of state income taxes, continues our commitment to lower property taxes and makes responsible spending decisions within our ability to pay. The budget advances education and training programs to give all of our citizens the opportunity to succeed and enhances our environment.

While the product of the budget deliberations was a good one, the process itself needs improvement. Nearly 500 days elapsed from the time budget instructions were sent to state agencies in May of 1996 until the signing of the budget bill in October 1997. The bill itself was

C. HUMAN RESOURCES

BOARD ON AGING AND LONG TERM CARE

1. Ombudsman Program

Sections 96m, 169 [as it relates to s. 20.432 (1) (a)] and 2046m

Section 169 [as it relates to s.20.432 (1) (a)] appropriates \$22,800 GPR in fiscal year 1997-98 and \$91,500 GPR in fiscal year 1998-99 to fund 1.0 GPR FTE ombudsman position in fiscal year 1997-98 and 2.0 GPR FTE ombudsman positions in fiscal year 1998-99 for activities related to residential care apartment complexes. Although there is no language in the budget bill that authorizes this increase, the Legislature passed a motion and an amendment during its budget deliberations to authorize these funds for the ombudsman program. Section 96m authorizes the positions at the Board on Aging and Long Term Care to carry out their activities in residential care apartment complexes and section 2046m requires the facilities to post in a conspicuous location a notice, provided by the board, of the name, address and phone number of the long term care ombudsman program.

I object to the expansion of the ombudsman program to residential care apartment complexes since these facilities are designed as home-like environments for the elderly and disabled. Thus, I am vetoing sections 96m and 2046m. By lining out the Board on Aging and Long Term Care's s. 20.432 (1) (a) appropriation and writing in a smaller amount that deletes \$22,800 GPR in fiscal year 1997-98 and \$91,500 GPR in fiscal year 1998-99, I am vetoing the part of the bill which funds the expansion of this program to residential care apartment complexes. I am also requesting the Department of Administration Secretary not to allot these funds. I am also requesting the Secretary not to authorize the 1.0 FTE position in fiscal year 1997-98 and the 2.0 FTE positions in fiscal year 1998-99.

HEALTH AND FAMILY SERVICES

2. Medical Assistance Program Benefits

Sections 169 [as it relates to s. 20.435 (5) (b), Medical Assistance Program Benefits], 1921 and 9123 (15s)

Decreased Federal Matching Rate Section 169 [as it relates to s.20.435 (5) (b), Medical Assistance Program Benefits] appropriates GPR funds in fiscal year 1998-99 for a change in the federal matching rate for Medical Assistance (MA). Now that the actual federal matching rate for fiscal year 1998-99 is known to be higher, the fiscal year 1998-99 budget can be reduced by \$5,704,600 GPR for MA benefits.

I am writing down the MA GPR appropriation because the federal matching rate will not decline as projected.

Supplemental Payments for Essential Access City Hospitals Section 169 [as it relates to s.20.435 (5) (b), Medical Assistance Program Benefits] contains an appropriation of \$123,400 GPR in

Chapter HFS 89

RESIDENTIAL CARE APARTMENT COMPLEXES

Subchapter I – General Provisions

HFS 89.11	Authority and purpose.
HFS 89.12	Applicability.
HFS 89.13	Definitions.
HFS 89.14	Registration or certification requirement.
HFS 89.15	Limitation on use of name "residential care apartment complex".

Subchapter II – General Requirements for Operation

HFS 89.21	Applicability.
HFS 89.22	Building requirements.
HFS 89.23	Services.
HFS 89.24	Hours of service.
HFS 89.25	Schedule of fees for services.
HFS 89.26	Comprehensive assessment.
HFS 89.27	Service agreement.
HFS 89.28	Risk agreement.
HFS 89.29	Admission and retention of tenants.

Subchapter III – Tenant Rights

HFS 89.31	Applicability.
HFS 89.32	Facility policies and procedures.
HFS 89.33	Explanation of tenant rights.
HFS 89.34	Rights of tenants.
HFS 89.35	Grievances.

HFS 89.36	Coercion and retaliation prohibited.
-----------	--------------------------------------

Subchapter IV – Registration

HFS 89.41	Applicability.
HFS 89.42	Information requirements, application procedure and form.
HFS 89.43	Issuance.
HFS 89.44	Termination and revocation.
HFS 89.45	Appeals.

Subchapter V – Certification

HFS 89.51	Applicability.
HFS 89.52	Standards for operation.
HFS 89.53	Certification procedures.
HFS 89.54	Reporting of changes.
HFS 89.55	Monitoring.
HFS 89.56	Intermediate sanctions and penalties.
HFS 89.57	Revocation.
HFS 89.58	Coercion and retaliation prohibited.
HFS 89.59	Appeals.

Subchapter VI – Approval of Partial Conversion of a Nursing Home or Community-Based Residential Facility

HFS 89.61	Submission of additional information.
HFS 89.62	Application review and approval.

Note: This chapter was titled Assisted Living Facilities before December 1, 1998.

Subchapter I – General Provisions

HFS 89.11 Authority and purpose. This chapter is promulgated under the authority of s. 50.034, Stats., to establish standards and procedures for the certification or registration of residential care apartment complexes in order to promote the health and safety of persons residing in and receiving services from those facilities. This chapter is intended to ensure that all residential care apartment complexes provide each tenant with an independent apartment in a setting that is home-like and residential in character; make available personal, supportive and nursing services that are appropriate to the needs, abilities and preferences of individual tenants; and operate in a manner that protects tenants' rights, respects tenant privacy, enhances tenant self-reliance and supports tenant autonomy in decision-making including the right to accept risk.

Note: Before September 6, 1997, residential care apartment complexes were called "assisted living facilities." The name change was made by 1997 Wisconsin Act 13.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.12 Applicability. (1) This chapter applies to the department and to all residential care apartment complexes operating in Wisconsin.

(2) This chapter does not apply to nursing homes, community-based residential facilities or hospitals or to congregate housing or housing for the elderly.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.13 Definitions. In this chapter:

(1) "Residential care apartment complex" or "facility" means a place where 5 or more adults reside that consists of independent apartments, each of which has an individual lockable entrance and exit, a kitchen, including a stove, and individual bathroom, sleeping and living areas, and that provides, to a person who resides in the place, not more than 28 hours per week of services that are supportive, personal and nursing services. "Residential care apartment complex" does not include a nursing home or a community-based residential facility, but may be physically part of a structure that is a nursing home or community-based residential facility.

(2) "Residential care apartment complex services" means services provided by a residential care apartment complex, either directly or under contract, to meet needs identified in a tenant's service agreement, to meet unscheduled care needs or to provide emergency services 24 hours a day.

(3) "Bathroom" means a room with floor to ceiling walls and a door which contains a toilet, a sink and a bathtub or shower.

(4) "Community-based residential facility" has the meaning specified in s. 50.01 (1g), Stats.

(5) "Comprehensive assessment" means a systematic procedure for identifying an individual's physical, health and social needs; preferences; and capacity for self-care.

(6) "Congregate housing" means multi-unit rental housing which offers limited social support for tenants, including meals in a common dining room and space for group social and recreational activities.

Note: Congregate housing may become a residential care apartment complex if it chooses to offer supportive, personal and nursing services.

(7) "Contract" means all written agreements between the tenant and the residential care apartment complex, including the service agreement, the risk agreement and any rental or sales contract.

(8) "Department" means the Wisconsin department of health and family services.

(9) "Designated representative" means anyone identified by a tenant to represent the tenant in relation to the tenant's residential care apartment complex. A designated representative may be a family member, friend, health care agent, guardian or other person named by the tenant.

(10) "Emergency assistance" means aid provided in the event of a situation that creates an imminent risk of serious harm to the health or safety of the person if he or she is not helped immediately.

(11) "Functionally distinct area" means a space that can be distinguished from other areas within the apartment by its actual or intended use. A functionally distinct area need not be a separate room.

(12) "Health monitoring" means the assessment of physical, functional and cognitive status to detect changes that may indicate health problems and to facilitate appropriate intervention. Health monitoring includes assessment of nutritional status, confusion,

unsteady gait, urinary incontinence, edema of extremities, fever, hypertension and other conditions.

(13) "Hospice care" means medical or support services for management of a terminal illness furnished by a hospice as defined in s. 50.90 (1), Stats.

(14) "Housing for the elderly" means multi-unit rental housing that is specially designed for and marketed to older people but does not offer supportive services, personal services and nursing services to its tenants.

Note: Housing for the elderly may become a residential care apartment complex if it chooses to offer supportive, personal and nursing services.

(15) "Incapable of making care decisions" means unable to understand one's own needs for supportive, personal or nursing services; to choose what, if any, services one wants to receive to meet those needs; and to understand the outcome likely to result from that choice. The term refers to the ability to make a decision and not to the content or result of the decision.

(16) "Independent apartment" means an individual living unit that has its own individual lockable entrance and exit, kitchen, bathroom, sleeping and living areas.

*** (17) "Individual lockable entrance and exit" means a door that provides access to an independent apartment and is equipped with an individually keyed lock which is operable from both inside and outside the unit and which the tenant can open, close and lock to ensure privacy.**

(18) "Kitchen" means a visually and functionally distinct area within the living unit which is intended to be used exclusively for food preparation and which contains a stove, a refrigerator, a sink, counter space for food preparation and a place for storage of utensils and supplies.

(19) "Living area" means a visually and functionally distinct area within the living unit which is intended for general use and which is not a bathroom, kitchen or sleeping area.

(20) "Medical assistance" means the assistance program under ss. 49.43 to 49.475 and 49.49 to 49.497, Stats., and chs. HFS 101 to 108.

(21) "Medication administration" means giving or assisting tenants in taking prescription and nonprescription medications in the correct dosage, at the proper time and in the specified manner.

(22) "Medication management" means oversight by a nurse, pharmacist or other health care professional to minimize risks associated with use of medications. Medication management includes proper storage of medications; preparation of a medication organization or reminder system; assessment of the effectiveness of medications; monitoring for side effects, negative reactions and drug interactions; and delegation and supervision of medication administration.

(23) "Nursing home" has the meaning specified in s. 50.01 (3), Stats.

(24) "Nursing services" means nursing procedures, excluding personal services, which, according to the provisions of ch. 441, Stats., the nurse practice act, must be performed by a registered nurse or as a delegated act under the supervision of a registered nurse.

(25) "Personal services" means direct assistance with activities of daily living, including dressing, eating, bathing, grooming, toileting, transferring and ambulation or mobility.

(26) "Recuperative care" means services provided for a period of 90 days or less which are intended to assist a person in recovering from an illness, injury, surgery or other acute condition or to stabilize the health or functioning of the individual.

(27) "Risk agreement" means a binding stipulation identifying conditions or situations which could put the tenant at risk of harm or injury and the tenant's preference for how those conditions or situations are to be handled.

(28) "Service agreement" means a binding stipulation between the tenant and the facility which specifies services the facility will provide and the tenant will accept.

(29) "Sleeping area" means a visually and functionally distinct area within the living unit which is intended to be used for sleeping. A sleeping area does not include a bathroom, kitchen or living area.

(30) "Stove" means a cooking appliance that is a microwave oven of at least 1000 watts or that consists of burners and an oven.

(31) "Supportive services" means assistance with tasks which the tenant cannot perform for himself or herself as a result of functional limitations, or one-on-one supervision of the tenant. Supportive services include meals, housekeeping, laundry, arranging for transportation and arranging for access to medical services.

*** (32) "Tenant" means an individual who resides in and has a service agreement with a residential care apartment complex.**

(33) "Unscheduled care need" means any need for supportive, personal or nursing services the timing of which cannot be predicted, such as incontinence care. Unscheduled care needs do not include the need for emergency assistance.

(34) "Visually distinct area" means a space which can be distinguished from other areas within the apartment by sight. A visually distinct area need not be a separate room.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am. (30), Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.14 Registration or certification requirement. All residential care apartment complexes shall be either registered or certified by the department under this chapter.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.15 Limitation on use of name "residential care apartment complex". As provided in s. 50.034 (5), Stats., an entity that does not meet the definition of residential care apartment complex under s. 50.01 (1d), Stats., may not designate itself as a residential care apartment complex or use the words "residential care apartment complex" to represent or tend to represent the entity as a residential care apartment complex or services provided by the entity as services provided by a residential care apartment complex.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

Subchapter II - General Requirements for Operation

HFS 89.21 Applicability. The provisions of this subchapter apply to all residential care apartment complexes.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.22 Building requirements. (1) COMPLIANCE WITH APPLICABLE CODES. A residential care apartment complex shall comply with all applicable statutes, rules and regulations.

Note: The Wisconsin department of commerce considers residential care apartment complexes to be multifamily dwellings subject to the ILHR/Comm code in effect at the time of construction.

(2) APARTMENTS. (a) *Independent apartments.* All living units in a residential care apartment complex shall be independent apartments.

(b) *Physical features.* Each independent apartment shall have at least the following:

1. An individual lockable entrance and exit. A single door may serve as both entrance and exit. Keys to the door to the independent apartment and to the residential care apartment complex shall be supplied to the tenant.

2. A kitchen. The kitchen shall be a visually and functionally distinct area within the apartment. The refrigerator shall have a freezer compartment. The sink shall have hot and cold running

(b) *Fees.* 1. The charge for the services covered by the service agreement, both individually and in total, and the time and amount of any fee increase that will occur during the period covered by the service agreement. Facilities shall remind tenants of any fee increase by written notice 30 days in advance of the effective date.

2. Any supplemental fees for services not covered in the service agreement or other agreement between the facility and the tenant.

(c) *Policies and procedures.* 1. 'Additional services'. a. Types of additional services which the facility would make available or which the facility would assist in arranging for a tenant during acute episodes, following release from the hospital or during other periods when the tenant may experience temporary needs.

b. Policies and procedures regarding services which the tenant arranges to receive from providers other than the residential care apartment complex.

2. 'Termination or transfer'. Grounds for termination of the contract between the tenant and the facility or relocation of the tenant to another residence and the procedure for tenant participation in decisions regarding termination and relocation. Conditions for termination contained in the service agreement shall not be contrary to the requirements relating to contract termination contained in s. HFS 89.29 (3).

3. 'Tenant's rights'. The residential care apartment complex's policies relating to tenant rights, including at a minimum, the rights identified in subch. III.

4. 'Dispute resolution'. The facility's internal grievance procedure for resolving tenant complaints.

(3) **OTHER SPECIFICATIONS.** (a) Only services selected and agreed to by the tenant may be included in the service agreement.

(b) A service agreement may not waive any of the provisions of this chapter or other rights of the tenant.

(c) The service agreement shall be presented in language and a format that make it possible for tenants to readily identify the type, amount, frequency and cost of services they receive, the qualifications of the staff providing those services and whether the services are provided directly by the facility or by subcontract.

(d) The initial service agreement and any renewals of the service agreement shall be dated and signed by a representative of the facility; by the tenant or by the tenant's guardian, if any, and all other persons with legal authority to make health care or financial decisions for the tenant; and by the county for a tenant whose services are funded under s. 46.27 (11) or 46.277, Stats. The facility shall provide a copy of the service agreement to all parties who signed the agreement.

Note: Persons with legal authority to make health care or financial decisions for the tenant include agents designated under an activated power of attorney for health care under ch. 155, Stats., and durable power of attorney under s. 243.10, Stats.

(e) The service agreement shall be completed by the date of admission.

(4) **REVIEW AND UPDATE.** The service agreement shall be reviewed when there is a change in the comprehensive assessment or at the request of the facility or at the request or on behalf of the tenant and shall be updated as mutually agreed to by all parties to the agreement.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.28 Risk agreement. (1) **REQUIREMENT.** As a protection for both the individual tenant and the residential care apartment complex, a residential care apartment complex shall enter into a signed, jointly negotiated risk agreement with each tenant by the date of occupancy.

(2) **CONTENT.** A risk agreement shall identify and state all of the following:

(a) *Risk to tenants.* 1. Any situation or condition which is or should be known to the facility which involves a course of action taken or desired to be taken by the tenant contrary to the practice

or advice of the facility and which could put the tenant at risk of harm or injury.

2. The tenant's preference concerning how the situation is to be handled and the possible consequences of acting on that preference.

3. What the facility will and will not do to meet the tenant's needs and comply with the tenant's preference relative to the identified course of action.

4. Alternatives offered to reduce the risk or mitigate the consequences relating to the situation or condition.

5. The agreed-upon course of action, including responsibilities of both the tenant and the facility.

6. The tenant's understanding and acceptance of responsibility for the outcome from the agreed-upon course of action.

(b) *Unmet needs.* Any needs identified in the comprehensive assessment which will not be provided for by the facility, either directly or under contract.

(c) *Notice regarding enforcement in registered facilities.* For registered facilities only, notice that the department does not routinely inspect registered facilities or verify their compliance with this chapter and does not enforce contractual obligations under the service or risk agreements.

(3) **NO WAIVER OF RULES OR RIGHTS.** A risk agreement may not waive any provision of this chapter or any other right of the tenant.

(4) **OBLIGATION TO NEGOTIATE IN GOOD FAITH.** Neither the tenant nor the facility shall refuse to accept reasonable risk or insist that the other party accept unreasonable risk.

(5) **SIGNED AND DATED.** The risk agreement shall be signed and dated by both an authorized representative of the residential care apartment complex and by the tenant or the tenant's guardian and agents designated under an activated power of attorney for health care under ch. 155, Stats., and durable power of attorney under s. 243.10, Stats., if any.

(6) **UPDATING.** The risk agreement shall be updated when the tenant's condition or service needs change in a way that may affect risk, as indicated by a review and update of the comprehensive assessment, by a change in the service agreement or at the request of the tenant or facility.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.29 Admission and retention of tenants.

(1) **ADMISSION.** No residential care apartment complex may admit any of the following persons, unless the person being admitted shares an apartment with a competent spouse or other person who has legal responsibility for the individual:

(a) A person who has a court determination of incompetence and is subject to guardianship under ch. 880, Stats.

(b) A person who has an activated power of attorney for health care under ch. 155, Stats.

(c) A person who has been found by a physician or psychologist to be incapable of recognizing danger, summoning assistance, expressing need or making care decisions

Note: This requirement is included because tenants need to be competent to understand and express their needs and preferences, enter into a service agreement and understand and accept risk.

(2) **RETENTION.** (a) A residential care apartment complex may retain a tenant whose service needs can be met by the facility or can be met with services made available by another provider.

(b) A residential care apartment complex may retain a tenant who becomes incompetent or incapable of recognizing danger, summoning assistance, expressing need or making care decisions, provided that the facility ensures all of the following:

1. That adequate oversight, protection and services are provided for the individual.

2. That the tenant has a guardian appointed under ch. 880, Stats., or has an activated power of attorney for health care under ch. 155, Stats., or a durable power of attorney under s. 243.10,

Stats., or both. The activated power of attorney for health care or durable power of attorney shall, either singly or together, substantially cover the person's areas of incapacity.

3. That both the service agreement and risk agreement are signed by the guardian and by the health care agent or the agent with power of attorney, if any.

Note: Facilities are permitted the option of retaining tenants who become incompetent or incapable of recognizing danger, summoning assistance, expressing need or making care decisions because familiar surroundings and routines are an important component of dementia care and in order to accommodate aging in place.

(c) No owner, operator, staff member or family member of a person connected with a residential care apartment complex may serve as a guardian, representative payee or other financial conservator for a tenant of the facility.

(3) **TERMINATION OF CONTRACT.** (a) *Reasons.* A residential care apartment complex may terminate its contract with a tenant when any of the following conditions apply:

1. Except as provided under par. (b), the tenant's needs cannot be met at the level of service which facilities are required to make available to tenants under s. HFS 89.23 (2).

2. Except as provided under par. (b), the time required to provide supportive, personal and nursing services to the tenant exceeds 28 hours per week.

3. Except as provided under par. (b), the tenant's condition requires the immediate availability of a nurse 24 hours a day.

4. The tenant is adjudicated incompetent under ch. 880, Stats., has an activated power of attorney for health care under ch. 155, Stats., or has been found to be incapable of recognizing danger, summoning assistance, expressing need or making care decisions by 2 physicians or by one physician and one licensed psychologist who have personally examined the tenant and signed a statement specifying that the person is incapable.

5. The tenant's behavior or condition poses an immediate threat to the health or safety of self or others. Mere old age, eccentricity or physical disability, either singly or together, are insufficient to constitute a threat to self or others.

6. The tenant refuses to cooperate in an examination by a physician or licensed psychologist of his or her own choosing to determine his or her health or mental status for the purpose of establishing appropriateness for retention or termination.

7. The tenant's fees have not been paid, provided the tenant and the tenant's designated representative, where appropriate, were notified and given reasonable opportunity to pay any deficiency.

8. The tenant refuses to enter into a negotiated risk agreement or refuses to revise the risk agreement when there is a documented and significant medical reason for doing so.

9. The presence of any condition identified as grounds for termination in the service agreement, provided that these grounds are not inconsistent with requirements contained in subds. 1. to 8.

(b) *Supplemental services as an alternative to termination.* A residential care apartment complex shall not terminate its contract with a tenant for a reason under par. (a) 1. to 3. if the tenant arranges for the needed services from another provider consistent with s. HFS 89.24 (2) (b) and any unmet needs or disputes regarding potentially unsafe situations are documented in a risk agreement.

(c) *Procedures for termination.* 1. a. Except as provided under subd. 2., a residential care apartment complex shall provide 30 days advance notice of termination to the tenant and the tenant's designated representative, if any. If there is no designated representative, the facility shall notify the county department of social or human services under s. 46.21, 46.22 or 46.23, Stats.

b. Notice of termination shall include the grounds for termination and information about how to file a grievance consistent with the termination and grievance policies and procedures contained in the service agreement.

c. The 30-day notice period required for termination may include the period covered by a notice of nonpayment of fees and opportunity to pay any deficiency as required under par. (a) 7., provided that notice of termination is included with the notice of non-payment of fees.

2. No 30-day notice is required in an emergency. In this subdivision, "emergency" means an immediate and documented threat to the health or safety of the tenant or of others in the facility.

(d) *Failure to meet requirements of this chapter.* If the requirements of this chapter are violated by either the facility or the tenant, the party which is not in violation may terminate the contract on 30 days written notice without financial penalty.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

Subchapter III - Tenant Rights

HFS 89.31 Applicability. The provisions of this subchapter apply to all registered and certified residential care apartment complexes.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.32 Facility policies and procedures. A residential care apartment complex shall establish written policies regarding tenant rights. Facility policies shall be consistent with and include all of the rights contained in this subchapter.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.


HFS 89.33 Explanation of tenant rights. A residential care apartment complex shall explain and provide copies of the tenant rights under this subchapter and of any related facility policies and procedures to the tenant and to his or her designated representative before the service agreement or any other written agreement between the tenant and the facility is signed. A copy of the rights and related policies shall be posted in a public place in the facility where they will be visible to tenants, visitors and staff.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.


HFS 89.34 Rights of tenants. A tenant of a residential care apartment complex shall have all the rights listed in this section. These rights in no way limit or restrict any other rights of the individual under the U.S. Constitution, civil rights legislation or any other applicable statute, rule or regulation. Tenant rights are all of the following:

(1) **COURTESY AND RESPECT.** To be treated with courtesy, respect and full recognition of the tenant's dignity and individuality by all employees of the facility and all employees of service providers under contract to the facility.

(2) **PRIVACY.** To have privacy in his or her independent apartment and when receiving supportive, personal or nursing services.

 (3) **SELF-DIRECTION.** To make reasonable decisions relating to activities, daily routines, use of personal space, how to spend one's time and other aspects of life in the residential care apartment complex. *NOT CONTAINED IN S. 50.09*

(4) **MANAGEMENT OF FINANCIAL AFFAIRS.** To manage his or her own financial affairs unless the tenant delegates, in writing, responsibility for financial management to someone of the tenant's choosing or the tenant is adjudicated incompetent, in which case the guardian shall be responsible.

 (5) **SERVICE CHOICE.** To choose which services are included in the service agreement, including the right to refuse services provided that the refusal would not endanger the health or safety of the other tenants. *NOT CONTAINED IN S. 50.09*

(6) **CHOICE OF HEALTH CARE PROVIDERS.** To the facility's non-interference with the tenant's choice of his or her physician and providers of other medical, mental health and pharmaceutical services. A tenant shall not be required to use medical, mental health

or pharmaceutical providers who are employed by or affiliated with the facility or to whom the tenant is referred by facility staff. A tenant's choice of providers of supportive, personal and nursing services from providers other than the residential care apartment complex is subject to the requirements of s. HFS 89.24 (2) (b).

(7) **FURNISHINGS AND POSSESSIONS.** To furnish his or her independent apartment and to maintain personal possessions as space permits as long as the tenant does not unreasonably interfere with the other tenants' choices or endanger the health or safety of the other tenants.

(8) **ASSOCIATION.** To receive visitors, meet with groups or participate in activities of the tenant's choice, including organizing and participating in tenant or family councils or groups provided that the health or safety of the other tenants is not endangered.

(9) **MAIL.** To receive and send sealed, unopened mail, including packages. The residential care apartment complex shall give mail to tenants on the day it is received or as soon as possible thereafter.

(10) **TELEPHONE.** To have a private telephone properly installed in his or her independent apartment.

(11) **RELIGION.** No tenant may be required to engage in any religious activity.

(12) **CONFIDENTIALITY OF RECORDS.** To have his or her medical, personal and financial records kept confidential consistent with all applicable federal and state statutes, rules and regulations. For the purposes of registration, certification and administration, staff of the residential care apartment complex, the department, and any county department or aging unit designated to administer the medicaid waiver for those tenants whose services are paid for under s. 46.27 (11) or 46.277, Stats., shall have access to a tenant's records without the tenant's consent, but may not disclose the information except as permitted by law.

(13) **ACCESS TO RECORDS.** A tenant or tenant's designated representative may inspect, copy and challenge the accuracy of the tenant's records.

(14) **DISCLOSURE OF PERSONAL INFORMATION.** To have necessary discussion by facility employees regarding one's physical, mental or medical condition, services, payment sources and other personal affairs conducted discreetly, and to not have facility employees, staff, or any service provider under contract with the facility indiscreetly disclosing personal information about oneself to other tenants.

(15) **RECEIPT OF SERVICES.** To receive services consistent with the service agreement and risk agreement.

(16) **MEDICATIONS.** Except as provided for in the service agreement or risk agreement, to have the facility not interfere with the tenant's ability to manage his or her own medications or, when the facility is managing the medications, to receive all prescribed medications in the dosage and at the intervals prescribed by the tenant's physician and to refuse a medication unless there is a court order.

(17) **SAFE ENVIRONMENT.** To a safe environment in which to live.

(18) **FREEDOM FROM ABUSE.** To be free from physical, sexual or emotional abuse, neglect or financial exploitation or misappropriation of property by the facility, its staff or any service provider under contract with the facility.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.35 Grievances. (1) A residential care apartment complex shall have a written grievance procedure and shall provide a copy to each tenant and tenant's designated representative, where applicable. Tenants of a residential care apartment complex may file complaints with the department. The grievance procedure shall include information about how to file a complaint with the department.

Note: Complaints may be filed with the Department by writing or phoning the Bureau of Quality Assurance, Division of Supportive Living, P.O. Box 7851, Madison, WI 53707. (608)266-0120.

(2) Any person assigned by the residential care apartment complex to investigate the facts associated with a grievance shall not have had any involvement in the issues leading to the grievance.

(3) The residential care apartment complex shall provide a written summary of the grievance, findings, conclusions and any action taken as a result of the grievance to the tenant, the tenant's designated representative, if any, and, for tenants whose services are funded under s. 46.27 (11) or 46.277, Stats., the county department or aging unit designated to administer the medical assistance waiver.

(4) Tenants of a residential care apartment complex may file complaints with the department. The department shall maintain a record of all complaints.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.36 Coercion and retaliation prohibited. Any form of coercion to discourage or prevent a tenant or the tenant's guardian or designated representative from exercising any of the rights under this subchapter or from filing a grievance or complaint is prohibited. Any form of retaliation against a tenant for exercising his or her rights or filing a grievance or complaint, or against an employee or service provider who assists a tenant in exercising his or her rights or filing a grievance or complaint, is prohibited.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

Subchapter IV - Registration

HFS 89.41 Applicability. The provisions of this subchapter apply to a facility which is applying to the department for registration as a residential care apartment complex or which is registered by the department as a residential care apartment complex.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.42 Information requirements, application procedure and form. An applicant shall submit a completed application form to the department to initiate the registration process. The application shall be on a form supplied by the department that is signed and dated by the applicant and shall include assurances that the applicant meets the definition and all the requirements for a residential care apartment complex contained in this chapter as well as all applicable federal, state and local statutes, ordinances, rules and regulations.

Note: To obtain a copy of the application form, contact the Bureau of Quality Assurance, Division of Supportive Living, P.O. Box 7851, Madison, WI 53707. Phone: (608)266-0120.

History: Cr. Register, February, 1997, No. 494, eff. 3-1-97; am., Register, November, 1998, No. 515, eff. 12-1-98.

HFS 89.43 Issuance. (1) The department shall issue a statement of registration upon receipt of a completed application and assurances.

(2) Registration shall be issued only for the residential care apartment complex location, owner and operator identified in the application form and is not transferable to any other residential care apartment complex, owner or operator.

(3) The department may, without notice to the facility, visit the facility at any time to determine if the facility meets the requirements of this chapter. The owner or operator shall be able to verify compliance with this chapter and shall provide the department access to the residential care apartment complex and its staff, tenants and records.

(4) A registered residential care apartment complex shall notify tenants that, for registered facilities, the department does not routinely inspect facilities or verify compliance with the

SENATE BILL 40

SECTION 1792

1 screening under s. 46.283 (4) (g), unless the incapacitated individual is expected to
2 become eligible for medical assistance within 6 months.

3 SECTION 1793. 50.065 (5d) (a) 4. of the statutes is amended to read:

4 50.065 (5d) (a) 4. The manner in which the tribe will submit information
5 relating to a rehabilitation review to the department so that the department may
6 include that information in its report to the legislature required under sub. (5g).

7 SECTION 1794. 50.065 (5g) of the statutes is repealed.

8 SECTION 1795. 50.09 (title) of the statutes is amended to read:

9 * 50.09 (title) **Rights of residents in certain facilities and complexes.**

10 SECTION 1796. 50.09 (1) of the statutes is renumbered 50.09 (1m), and 50.09
11 (1m) (intro.), (b), (c), (e), (f) 1. and 3., (g), (j) (intro.) and 2. (intro.) and a. and (L), as
12 renumbered, are amended to read:

13 50.09 (1m) **RESIDENTS' RIGHTS.** (intro.) Every resident in a nursing home or
14 community-based residential facility or a complex shall, except as provided in sub.
15 (5), have the right to:

16 (b) Present grievances on the resident's own behalf or others to the facility's
17 staff or administrator of the facility or complex, to public officials or to any other
18 person without justifiable fear of reprisal, and to join with other residents or
19 individuals within or outside of the facility or complex to work for improvements in
20 resident care. *REAL GRIEVANCE PROCEDURE IS IN HFS 89.35 AND 89.36*

21 (c) Manage the resident's own financial affairs, including any personal
22 allowances under federal or state programs, unless the resident delegates, in
23 writing, ~~such~~ this responsibility to the facility or complex and the facility or complex
24 accepts the responsibility, or unless the resident delegates to someone else of the
25 resident's choosing and that person accepts the responsibility. The resident shall

SENATE BILL 40

1 receive, upon written request by the resident or guardian, a written monthly account
2 of any financial transactions made by the facility or complex under such a delegation
3 of responsibility. *SIMILAR TO HFS 89.34(4)*

4 (e) Be treated with courtesy, respect and full recognition of the resident's
5 dignity and individuality, by all employees of the facility or complex and licensed,
6 certified, or registered providers of health care and pharmacists with whom the
7 resident comes in contact. *SAME AS HFS 89.34(1)*

8 * (f) 1. 'Privacy for visits by spouse.' If both spouses are residents of the same
9 facility or complex, they shall be permitted to share a room or apartment unless
10 medically contraindicated as documented by the resident's physician or advanced
11 practice nurse prescriber in the resident's medical record. *ACAC ARE PRIVATE APARTMENTS; SUCH A RIGHT IS UNNECESSARY*

12 3. Confidentiality of health and personal records, and the right to approve or
13 refuse their release to any individual outside the facility or complex, except in the
14 case of the resident's transfer to another facility or complex or as required by law or
15 3rd-party payment contracts and except as provided in s. 146.82 (2) and (3). *SIMILAR TO HFS 89.34(12)*

16 (g) Not to be required to perform services for the facility or complex that are not
17 included for therapeutic purposes in the resident's plan of care. *WOULD BE COVERED UNDER HFS 89.27 SERVICE AGREEMENT*

18 (j) (intro.) Be transferred or discharged, and be given reasonable advance notice
19 of any planned transfer or discharge, and an explanation of the need for and
20 alternatives to the transfer or discharge. The facility or complex to which the
21 resident is to be transferred must have accepted the resident for transfer, except in
22 a medical emergency or if the transfer or discharge is for nonpayment of charges
23 following a reasonable opportunity to pay a deficiency. No person may be
24 involuntarily discharged for nonpayment under this paragraph if the person meets
25 all of the following conditions:

TERMINATION OF CONTRACT PROVISIONS OUTLINED UNDER HFS 89.27(3)

2. (intro.) ~~The funding of his or her care in the nursing home or community-based residential facility under s. 49.45 (6m) is reduced or terminated because of one of the following:~~ *R CAC TENANTS ARE NOT ELIGIBLE FOR*

a. He or she requires a level or type of care which that is not provided by the nursing home or community-based residential facility.

(L) Receive adequate and appropriate care within the capacity of the facility or complex.

SECTION 1797. 50.09 (1g) of the statutes is created to read:

50.09 (1g) In this section, “complex” means a residential care apartment complex.

SECTION 1798. 50.09 (2), (4) and (5) of the statutes are amended to read:

50.09 (2) The department, in establishing standards for nursing homes and community-based residential facilities and complexes may establish, by rule, rights in addition to those specified in sub. (1) (1m) for residents in such the facilities or complexes.

(4) Each facility or complex shall make available a copy of the rights and responsibilities established under this section and the facility's rules of the facility or complex to each resident and each resident's legal representative, if any, at or prior to the time of admission to the facility or complex, to each person who is a resident of the facility or complex, and to each member of the facility's staff of the facility or complex. The rights, responsibilities, and rules shall be posted in a prominent place in each facility or complex. Each facility or complex shall prepare a written plan and provide appropriate staff training to implement each resident's rights established under this section.

SENATE BILL 40

1 (5) Rights established under this section shall not, except as determined by the
2 department of corrections, be applicable to residents in ~~such~~ facilities or complexes,
3 if the resident is in the legal custody of the department of corrections and is a
4 correctional client in ~~such~~ a facility or complex. *REFERENCE TO RCX?*

5 SECTION 1799. 50.09 (6) (a), (b) and (d) of the statutes are amended to read:

6 50.09 (6) (a) Each facility or complex shall establish a system of reviewing
7 complaints and allegations of violations of residents' rights established under this
8 section. The facility or complex shall designate a specific individual who, for the
9 purposes of effectuating this section, shall report to the administrator. *SIMILAR TO HFS 89.35*

10 (b) Allegations of violations of such rights by persons licensed, certified, or
11 registered under chs. 441, 446 to 450, 455, and 456 shall be promptly reported by the
12 facility or complex to the appropriate licensing, examining, or affiliated
13 credentialing board and to the person against whom the allegation has been made.
14 Any employee of the facility or complex and any person licensed, certified, or
15 registered under chs. 441, 446 to 450, 455, and 456 may also report such allegations
16 to the board. ~~Such~~ The board may make further investigation and take such
17 disciplinary action, within the board's statutory authority, as the case requires.

18 (d) The facility or complex shall attach a statement, which summarizes
19 complaints or allegations of violations of rights established under this section, to the
20 report required under s. 50.03 (4) (c) 1. or 2. The statement shall contain the date
21 of the complaint or allegation, the name of the persons involved, the disposition of
22 the matter, and the date of disposition. The department shall consider the statement
23 in reviewing the report. *RCAS ARE NOT REQUIRED STATUTORILY TO FILE THIS REPORT*

24 SECTION 1800. 50.14 (2) (intro.) of the statutes is amended to read:

